

## Spying on Workers a Hot Button Issue

By Holly Culhane, Contributing Columnist



California Supreme Court justices unanimously ruled this month [August] that employers have fairly wide latitude to spy on their employees. Writing for the court, Justice Marvin R. Baxter said the decision is not intended to encourage employers' secret surveillance of their workers. But the practice is permissible.

The decision demonstrates the evolving nature of "workplace spying." It gives employers confidence in their ability to monitor employee behavior, while warning workers their privacy rights are limited. Used properly, employee monitoring is a helpful tool for assuring customer service, as well as eliminating improper employee use of employer-paid time, computers, vehicles, etc.

Employers must exercise caution. This generally includes informing employees that monitoring is taking place. But as in the case recently decided by the California Supreme Court, circumstances may waive the need to give notice.

The case decided by the court involved two women, office manager Abigail Hernandez and administrative assistant Maria Lopez, who worked for Hillside's Children's Center Inc., a Los Angeles-area center for abused children.

The women claimed the center and its executive director violated their privacy by installing a hidden camera in their locked office without their knowledge. Center officials were trying to catch someone logging onto pornography websites on a computer in the office after hours. The women were not suspects. Hernandez and Lopez discovered the camera when they noticed a blinking red light.

Both women claim they suffered emotional distress. One said she changed clothes in the office before going to the gym after work. The other said she exposed her breasts and stomach to her colleague to show her how much weight she had lost after the birth of her baby. Center officials insisted the camera was turned on only in the evenings and never recorded the women.

Among the questions justices faced: Should these workers have expected their office was private? Did the hidden camera violate that privacy? Even if the camera did not record the women, were they damaged?

Baxter wrote that justices appreciated the women's "dismay over the discovery of video equipment ... that their employer had hidden among their personal effects in an office that was reasonably secluded from public access and view."

But justices did not consider the surveillance "highly offensive," nor did it amount to an "egregious violation of prevailing social norms." They concluded no real harm was suffered.

Whether it is by legislative act, or by court ruling, employee surveillance is an area of evolving workplace law and technological advances. Employers should go bravely, but cautiously into monitoring.

With regard to telephone and computer-use, including Internet use, workers' expectations should be to know that monitoring is happening; that it is done regularly for all employees, or completely

randomly (on a fair basis) at regular intervals; and that when violations are found, appropriate action will be taken.

With regard to company vehicle use, an employee's right to privacy is generally less when the vehicle is only used during company time and for company business. That expectation changes when the vehicle can be used outside of company time and for personal use.

Properly defining company policies regarding privacy issues and informing workers of those policies are not only prudent actions for company managers to take, they will reinforce workplace trust. Clearly communicate that monitoring will be done and why it is being done. Consistently and fairly implement monitoring, holding all employees accountable.

Employers recognize "that even in the workplace, there are certain zones of privacy that you don't normally enter into with surveillance equipment," employer attorney Paul W. Cane Jr. told *The Los Angeles Times* in response to the ruling. "On the other hand, it is the workplace and the employer does have a substantial interest in ensuring that misconduct does not occur there."

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